IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CWP No.12339 of 2005
Date of decision: 29.08.2007

Dr.Swaran Sharma

…Petitioner

Vs.

State of Haryana and another

…Respondent

Present:- Mr.Puneet Jindal for the petitioner.
Mr.M.S.Sindhu, DAG, Haryana for respondent No.1.

Mr.Rajesh Khurana, Advocate for respondent No.2

Permod Kohli, J.(Oral)

The petitioner was appointed as a lady doctor by the Secretary, District Red Cross Society, Ambala for the Family Welfare Planning Centre, Yamuna Nagar w.e.f. 25.6.1975 vide appointment letter dated 25.6.1975. Her engagement continued till 10.2.2005 when the petitioner was finally retired from service. It is not in the dispute that the normal date of superannuation in the Red Cross Society at the relevant time was 58 years. The society framed and adopted the rules, namely, Indian Red Cross Society and St. John Ambulance Association, District Branch, Yamuna Nagar Staff Rules of 2002 which, inter alia, provides as under:-

> "Superannuation & Retirement:
>
> 11. An employee shall retire on attaining the age of 58 years. He may, however, be allowed to work upto the age of 60 years by the appointing authority, if his performance is satisfactory and he is physically fit. No extension beyond 60 yeas shall be given except with the prior approval of the President.

Provided that an employee may seek voluntary retirement before attaining the age of 58 years, after completing 20 years service, and giving 3 months clear notice of his intention to do so. In that case, he shall be entitled to benefit admission to him under the Rules according to his length of service.

Provided that an employee, may, however, be permitted to withdraw his notice with the approval of the competent authority.

The date of retirement of the employees except those whose date of birth falls on the 1st day of month, will be the afternoon of the last day of the month, in which the date of their retirement falls instead of the actual date of their superannuation. In the case of those employees whose date of birth falls on the 1st day of the month, the date of retirement will be afternoon of the day of the month preceding the month their date of birth falls."

12. & 13 xxx xxxx xxxx xxx

14. Employee of the Society/Association shall be entitled to leave as per Haryana Government Leave Rules."

A bare perusal of these rules indicates that the society may retain an employee beyond 58 years of age up to the age of 60 years with the prior approval of the President. The petitioner attained the age of superannuation i.e. 58 years on 31.10.2004. However, the society continued the petitioner and recommended for extension of her services upto the age of 60 years to the Director Health Services, Haryana. It appears that the society was getting grant-in-aid and thought it proper to seek approval of the Director Health Services, Haryana. The Director Health Services vide its letter dated 9.2.2005 informed the society that in the event an employee is to be retained in service beyond the 58 years of age then no salary will be paid

by the State Government and, society will bear the expenses in respect of such employee. This decision was communicated to the petitioner on 10.2.2005.

The petitioner approached this Court seeking a direction for payment of salary and other post retiral benefits in CWP No.6001 of 2005, a Division Bench of this Court disposed of this writ petition with the following directions"-

> "After hearing the learned counsel for the petitioner, we dispose of this writ petition with a direction to respondent No.2 to take a decision on the representations Annexures P-5, P-8 and P-9, within a period of three months from the date that a certified copy of this order is supplied to him. In case the petitioner's claim is to be denied, the respondent shall pass a speaking and well reasoned order and communicate the same to the petitioner.

In furtherance to the directions of this Court in the aforesaid judgment dated 12.4.2005, respondents have passed the order dated 4.7.2005, declining the salary to petitioner for the period of overstay beyond 58 years of age. However, the claim for CPF amount was accepted with the condition that recovery, if any, will be deducted on account of discrepancy in pay scale. The Director Read Cross Society whereby certain recoveries have been ordered from the emoluments of the petitioner on the ground that the petitioner has been granted selection grade of Rs.4100-5300 w.e.f. 1.5.1989 whereas this pay scale was admissible w.e.f. 1.1.1998. This grade is payable to only 20% officers working on cadre posts. There is only one post of Medical Officer at the Centre to whom this grade is not admissible. This letter further indicated that the petitioner is entitled to ACP benefit w.e.f. 1.1.1998 instead of 1.1.1996. The petitioner is aggrieved of the

aforesaid two communications i.e. 9.2.2005 whereby recovery is sought to be made from her and the communication dated 4.7.2005 vide which his claim regarding pay fixation has been rejected.

The petitioner has brought on record resolution No.5 passed by the society wherein the employees of the society are to be governed by the Punishment and Appeal Rules as are applicable to the employees of the State Government. Similarly, the employees of the Society are also entitled to the allowance of leave and travel as are prevalent in Haryana Government and even the pay scale payable to the employees are the same as are meant for the State of Haryana. The claim of the petitioner is resisted by the State of Haryana as also by the Society on the grounds indicated in the impugned order dated 4.7.2005 and letter dated 9.2.2005.

I have heard learned counsel for the parties.

The petitioner has two kinds of claim; one salary for the period from 1.11.2004 till 10.2.2005, the period when the petitioner continued in service beyond 58 years of age and second; recovery from his post retiral dues. Admittedly, during this period, the petitioner was made to work. The respondents have extracted work from him. It is not the case of the respondents as the petitioner continued in service beyond 58 years of age on account of any kind of fraud, and/or misrepresentation on her part. To the contrary, the respondents' society itself retained her after superannuation, continued to pay salary and other allowances and recommended her case to the State Government. It clearly indicates that the society of its own and without any misrepresentation on the part of the petitioner allowed her to continue in service. It is only when the Director Health Services, Haryana informed the society that in the event of extension, the society will have to

bear the expenses of retention in service of the petitioner, petitioner's extension was terminated and she was made to retire on 10.2.2005. Since the petitioner has performed the duties during the extended period of employment, she is entitled to salary for this period. As far as the other aspects of payment of post retiral benefits is concerned, the petitioner has brought on record the Resolution No.5. Respondents have not denied the passing as well as the adoption of such resolution. Only objection raised by the society is that the petitioner was serving on a project and is governed by the service conditions of Scheme of the project. Under this project, she is not entitled to leave salary, gratuity or any other post retiral benefits which are payable to the State Government employees. The order of the appointment of the petitioner refers to the terms and conditions dated 18.2.1975. None of the parties placed on record this letter to indicate as to what were the terms and conditions for the appointment of the petitioner. The resolution No.5 adopted by the society provides for payment of all allowances of leave and travel and also to pay scale.

Learned counsel appearing for the State has referred to para 6 of the reply wherein reference is made to Indian Red Cross Society and St. John Ambulance Association, District Branch (Yamuna Nagar), Staff Rules, 2002. In this, it is mentioned that the services of the staff employed in different project of Red Cross, Yamuna Nagar which will run by grant in aid received for Red Cross Society, Yamuna Nagar from Haryana Govt. or Govt. of India, New Delhi, shall be governed by Rules of services of employees under grant-in-aid scheme. It further clarifies that their services shall continue as long as the grant exists. The rule does not in any manner deprive the petitioner of the post retiral benefits which are being claimed for

her. The petitioner has claimed gratuity, leave encashment, salary for the period w.e.f. 1.11.2004 to 10.2.2005, provident fund and has also challenged the action of the respondents for recovery of alleged excess salary. In view of Resolution No.5, petitioner is entitled to all the post retiral benefits as are available to the employees under State Government. Therefore, petitioner is entitled to gratuity as per the provisions of Payment and Gratuity Act 1972, leave encashment as provided to State Govt. employees and also provident fund contribution. It is not in dispute that the petitioner has contributed towards provident fund. Therefore, the same is to be paid to the petitioner alongwith statutory interest payable on such contribution. The other dispute raised is in terms of letter dated 9.2.2005 wherein certain recoveries are sought to be effected from the emoluments of the petitioner. Admittedly, the petitioner was allowed to draw the alleged excess salary right from 1.5.1989 and her pay fixed accordingly. She continued to receive selection grade till her retirement i.e. on 10.2.2005. During the period, she was in service, no objection was ever raised nor any recovery sought from her. It is not the case of the respondents that selection grade was released in favour of the petitioner on account of any fraud attributed to her. The issue is no more res integra and has been concluded in the judgment cited as **Sahib Ram v. State of Haryana and others,** 1995 Supp(1) SCC 18 wherein the Apex Court has observed as under:-

> "Admittedly, the appellant does not possess the required educational qualifications. Under the circumstances, the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale

> was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances, the amount paid till date may not be recovered form the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

This judgment has been followed by Division Bench of this Court in case **Karnail Singh vs. State of Punjab and another 2003(2) RSJ 433.** In view of the above circumstances and law laid down by the Apex Court, the action of the respondents in effecting any recovery from the petitioner on account of alleged excess payment of salary is also not sustainable in law.

Learned counsel for the respondent has raised a question as to maintainability of writ petition against the Red Cross Society. However, this issue has been decided by Division Bench of this Court in **The District Red Cross Society, Sirsa vs. Radha Kishan Rajpal and another** 2005 (1) SCT 41. In view of the Division Bench Judgment which is binding upon this Court, this preliminary objection is not valid.

For the above reasons, this petition is allowed. Respondents are directed to pay the salary to the petitioner for the period w.e.f. 1.11.1994 to 10.2.2005. She is also entitled to leave encashment as is permissible to the Haryana State Government employees as well as gratuity and Provident fund in accordance with the rules and Payment of Gratuity Act, 1972. Provident fund and Gratuity will carry statutory interest. Since the salary and leave encashment has been illegally withheld by the respondents, petitioner is also entitled to interest on the sum payable at the rate of 6 per

cent per annum after expiry of one month from the date of retirement i.e. 10.2.2005 till the amount is actually paid. Respondents are also restrained from effecting any recovery from emoluments of the petitioner on account of alleged excess payment. Let all the claims be settled and paid within period of three months from today.

Permod Kohli]

Judge

29.08.2007

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Note: Whether to be referred to Reported or not: Yes